

ENTERED

October 20, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

DEVADIP CARLOS ESPERICUETA
Movant

VS.

UNITED STATES OF AMERICA
Respondent

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CIVIL ACTION NO. 7:13-CV-205

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Movant's motion for leave to proceed in forma pauperis ("IFP") on appeal from the Court's dismissal of his claims pursuant to 28 U.S.C. 2255 (D.E. No. 26). On August 24, 2017, the Magistrate Court issued the Report and Recommendation, recommending that Movant's motion for leave to proceed IFP on appeal be denied as moot because Movant has already paid the entire appellate fee. The time for filing objections has passed, and no objections have been filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.¹ Finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, Movant's motion for leave to proceed IFP on appeal (D.E. No. 26) is **DENIED** as moot.

¹As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Douglas v. United Services Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996)(quoting Fed. R. Civ. P. 72(b) advisory committee's note (1983)) *superseded by statute on other grounds* by 28 U.S.C. § 636(b)(1), *as stated in* *ACS Recovery Servs., Inc v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n.5 (5th Cir. April 2, 2012).

SO ORDERED this 20th day of October, 2017, at McAllen, Texas.

A handwritten signature in black ink that reads "Randy Crane". The signature is written in a cursive, slightly stylized font. The "R" is large and loops around the "a", and the "C" is also large and loops around the "r". The "e" is written with a simple horizontal stroke.

Randy Crane
United States District Judge